

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 13, 2013

Elisabeth A. Shumaker
Clerk of Court

JOSE DE JESUS PALACIOS-YANEZ,

Petitioner,

v.

ERIC H. HOLDER, JR., United States
Attorney General,

Respondent.

No. 13-9511

ORDER

Before **BRISCOE**, Chief Judge, **TYMKOVICH** and **HOLMES**, Circuit Judges.

The petitioner seeks review of a decision by the Board of Immigration Appeals dismissing for lack of jurisdiction his motion to reopen his removal proceedings. The government has filed a motion to dismiss, arguing that this court lacks jurisdiction.

The petitioner's previous petition for review from the Board's order dismissing his appeal from the Immigration Judge's decision granting the petitioner's request for pre-hearing voluntary departure was denied. *Palacios-Yanez v. Holder*, 480 Fed. Appx. 474 (10th Cir. 2012). This court agreed with the Board that the petitioner's waiver of his right to appeal was valid and enforceable.

This court may not review the Board's grant of voluntary departure. *See Ekasinta v. Gonzales*, 415 F.3d 1188, 1190 (10th Cir. 2005). Moreover, the petitioner has waived

his appellate rights, and this court previously concluded that the waiver was valid and enforceable. *Palacios-Yanez*, 480 Fed. Appx. at 477.

The government's request to impose sanctions is denied. However, the petitioner's request to proceed *in forma pauperis* is DENIED. This appeal is frivolous as it is "based on an indisputably meritless legal theory." *Salgado-Toribio v. Holder*, ___ F.3d ___, 2013 WL 1731220 *2 (10th Cir. 2013) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). Moreover, the petitioner filed his second petition for review in the Ninth Circuit, although he should have known from the first petition that venue is proper in this circuit. *See discussion in Salgado-Toribio*, *4. In *Salgado-Toribio*, the petitioner filed three petitions for review in the Ninth Circuit in an attempt to obtain temporary stays of removal, although he should have known that venue was in this court. The court warned the petitioner that if he again filed a frivolous petition for review, sanctions would be imposed. Similarly, we warn the petitioner that sanctions may be imposed if he files another frivolous petition for review.

The government's motion to dismiss is **GRANTED**, and this appeal is **DISMISSED**. The petitioner's motion to proceed *in forma pauperis* is **DENIED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

by: Ellen Rich Reiter
Jurisdictional Attorney